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PROTECTION

Administrative Fairness Report

An Analysis of the Concepts, Players and Processes Contained in the *Forest Practices Code of British Columbia Act*

A FIRE PROTECTION PERSPECTIVE

February 2, 1995

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EXECUTIVE SUMMARY

This report is designed to provide a basic understanding of the concept of "administrative fairness" as it relates to concepts contained in the *Forest Practices Code of British Columbia Act* (referred to in this report as the *Forest Practices Act* for convenience). The Act introduces some new approaches to familiar problems. Forest Service personnel will be implementing the provisions contained in this new legislation, and in doing so, will have the opportunity to ensure that the administrative system is fair from the beginning to the end of the process.

"Administrative Fairness" means that all government officials should be fair and unbiased and should act in good faith while carrying out their duties. Depending on the level of decision-making for which the official is responsible, the specific requirements of fairness will vary. An official whose decisions will be binding on someone will be responsible for meeting more stringent standards than will an official who only makes recommendations.

At the initial stage of the process, the investigator carries out the fire cause investigations or required inspections and subsequently makes recommendations to a decision-maker within the Forest Service. The role of the investigator is not to make decisions. Accordingly, the investigator will be expected to act fairly in carrying out his/her responsibilities.

The decision-maker is the official whose responsibilities include assessing the information submitted by the investigator, making sure to consider all sides of the issue and finally, reaching a decision which can be viewed as being impartial and fair. Although there will be a variety of avenues of appeal available to the involved party, such appeals will be less likely and less threatening to the decision made if the decision-maker makes sure to adhere to the principles of administrative fairness.

The appeal processes available to a dissatisfied party include designated review officials, a Forest Appeals Commission (established in the *Forest Practices Act*), the courts and recourse through the Forest Practices Board. Although these bodies perform different functions (as discussed in this report), they will all consider whether or not persons involved at the initial recommendation and decision-making process were fair in carrying out their responsibilities. Ensuring and evidencing fairness at the outset of the administrative process will enhance the Forest Service's chances of success, should an issue be appealed.

With the introduction of the *Forest Practices Code*, there will be some alterations to the procedures previously in place under the repealed parts of the *Forest Act*. After consultation with Constitutional Law advisors, those individuals involved in the drafting process of the enabling legislation (*Forest Practices Act*) have reworked certain aspects of the compensation, penalty, billing and offence procedures with the goal of ensuring a higher level of fairness within the process.

However, despite these legislative changes, administrative fairness will not happen without the input of those persons responsible for implementing the legislation at the grassroots level.

This report is intended to provide both an explanation of administrative fairness and an overview of some of the key concepts of the *Forest Practices Act* as they relate to Fire Use and Prevention and Fire Control and Suppression. Corresponding diagrams are included in this report in order to explain the more complicated approaches which have been introduced under the new legislation.

I. ADMINISTRATIVE FAIRNESS: WHAT IS IT ALL ABOUT?

"Why bother with administrative fairness and all these legal requirements...?", "Why can't we just do our jobs...?"

These perspectives may reflect the feelings of many individuals working out in the field, and if you are thinking along these lines, you are probably not alone. The requirements of fairness and natural justice may seem like a burden at the outset; however, in the long run, fulfilling these requirements can greatly improve the efficiency of the governmental process. Perhaps the greatest return for implementing administrative fairness is that if people feel they are being treated fairly by government officials, they will be less likely to complain about the government. They will be less likely to appeal decisions and go to court and condemn government actions.

The concept of administrative fairness developed in case law. In *Nicholson* v. *Haldimand-Norfolk Regional Board of Commissioners of Police* [1979] 1 S.C.R. 311, Chief Justice Laskin accepted the following idea:

> ...that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. pp.324-5, cited from *Bates* v. *Lord Hailsam of St. Marylebone* [1972], 1 W.L.R. 1373 (U.K. Ch.)

Although *Nicholson* made less of a distinction between quasi-judicial and administrative than had previous case law, we can still extract from the *Nicholson* case the two following principles:

Administrative Function ⟶ Fairness required
Decision of a binding nature ⟶ Natural justice rules should be followed

However, *Nicholson* also established that there cannot be strict application of this approach. The facts of each case must be considered separately.

Generally speaking, the person who is making a binding decision which will affect someone's rights should be responsible for ensuring certain measures are met, which include:

- giving adequate/reasonable notice to the affected party;
- allowing the affected party an adequate hearing; and
- providing the affected party with reasons for the decision.

However, *Nicholson* also stands for the proposition that the facts of each case must be considered — as a consequence, a court would ask whether the *content of the fairness* is ample, given the circumstances.

More generally, the obligation to act fairly was summarized in the 1991 Supreme Court of Canada *Knight* decision, where L'Heureux-Dube, J. for the majority stated:

> The existence of a general duty to act fairly will depend on the consideration of three factors:
> i) the nature of the decision...;
> ii) the relationship between that body and the individual; and
> iii) the effect of that decision on the individual's rights.
> *Board of Education of Indian Head School Division No. 19 of Saskatchewan* v. *Knight* [1991] 69, DLR (4th), 489, at 500.

The *Knight* case reads in a duty of fairness and establishes that fairness has an independent value in its own right. The content of the duty to act fairly is variable; any system put in place should not be rigid. For instance, bearing in mind the particular circumstances of a specific situation, a hearing of some sort will often allow for better decisions to be made and thus, will bring about corresponding additional fairness. (According to the facts of the *Knight* case, which dealt with the dismissal of an employee, the employee had already been provided with the opportunity to state his case in the context of ongoing negotiations and had been given notification of reasons for the decision made; therefore, there was no requirement for a formal hearing.)

The person involved in the investigative process need only ensure that s/he is acting fairly and consistently in undertaking the duties of an investigator (i.e., the "cop" role as opposed to the "judge" role). The investigator need not concern him/herself with the more formal considerations (other than ensuring compliance with the standards of enforcement laid out in the legislation).

NOTE: Because the *Forest Practices Act* contains provisions to specifically provide for a measure of administrative fairness within the decision-making process, those persons involved at the initial stages need not take on the responsibility for acting stringently as quasi-judicials. However, an integral function of those persons involved at the outset of the decision-making process is to *ensure that a strong foundation of fairness is securely in place* as the issue in question moves through the system.

Diagram 1 provides a skeletal illustration of the entire Administrative Process under the Act and demonstrates how the processes discussed in this report interrelate.

II. THE KEY PLAYERS

1) THE INVESTIGATOR

The investigator fills a crucial role in enforcing and administering the legislation. Many of the investigator's findings will potentially lead to the affected party being charged with an offence. The investigator should keep this potential in mind and should make sure to comply with the legal requirements for carrying out an investigation — including proper search and seizure procedure and *Charter* warnings for those persons who may, at a later date, be charged with an offence. The Law Enforcement courses offered by the Forest Service contain additional information about these legal requirements. At the same time, however, the investigator should be aware of the principles of administrative fairness. The findings of an investigation may be used as the basis for a number of administrative decisions which, while not offences, will impact on the rights of the involved party.

In regard to billings and other administrative decisions, the investigator does not make decisions but at the most, makes recommendations to the decision-maker. Although decision-making does not occur at this stage of the process, the investigator should keep in mind that s/he is laying the foundation upon which all future decisions will rest.

Fire cause investigations will prove of fundamental importance in assessing one or more of the following consequences:

- whether the party will be charged with an offence under the Act;
- whether criminal charges will be laid;
- whether or not a party will be allowed or denied compensation for services rendered;
- whether a party will be billed for costs incurred by the Crown in fighting a fire;
- whether a party will be billed for the value of Crown resources destroyed or damaged as a result of a fire caused by the party;
- whether the party will be assessed an administrative penalty; and
- to provide a defense for the Forest Service if civil action is brought.

Of the entire administrative process, the investigation is probably the most important.

The roles of the investigator are:

- to investigate and document fully, taking into consideration *Charter* and other enforcement constraints as applicable;
- to adequately instruct those persons involved in the process; and
- to initiate further proceedings.

The *Forest Practices Act* details some of the responsibilities of the investigator in undertaking his/her tasks. In particular, the enforcement provisions in the Act relate directly to the investigator whose role will likely double as inspector. (N.B.: The distinction between 'investigator' and 'inspector' is a fine line to draw in practice. Generally, the inspector would be responsible for surveying the situation before a contravention or fire has occurred, whereas the investigator will have a more 'detective-like' role after the fact. However, inevitably there will arise some overlap between these two functions and as such, the same standards should be adhered to by those individuals carrying out either of the two functions).

Part 6 of the Act deals with Compliance and Enforcement. In particular, Section 107 stipulates the measures that must be adhered to when Forest Service personnel are engaged in conducting inspections of premises.

The powers of entry are quite wide: an official may, at a *reasonable time*, enter onto land if there are *reasonable grounds* (N.B.: Documentation will be important for identifying that the grounds for entry were reasonable) to believe that the land or premises is the site of a regulated practice (Section 107(2)(c)) or is the site of an activity requiring a license, permit or plan (Section 107(2)(e)). Furthermore, Section 107(3) establishes the authority to enter onto lands in or within 1 km of a forest if there are *reasonable grounds* to believe that a fire hazard or a risk situation might exist.

At all times, however, the investigator must be aware of the *Charter* — in particular, Section 8 states that "everyone has the right to be secure against unreasonable search and seizure". The specifics of these enforcement requirements fall outside the scope of this report. They are mentioned here only to alert the investigator that while administrative fairness is significant, the investigator must at all times acknowledge the confines of these existing legal instruments (the *Charter* especially), particularly when collecting information from the concerned party.

In undertaking these important tasks, the investigator must at all times be aware of the concept of administrative fairness. "Fairness" contains an element of subjectivity; therefore, the affected party's perception of whether or not s/he was treated fairly is an important criterion for the investigator to keep in mind. Because the term is quite difficult to define exactly, an investigator should incorporate principles of natural justice into the investigative process as much as possible (and practical) in the circumstances.

Also, an investigator should remember that if a thorough, well-documented and accurate investigation is conducted, the basic building blocks of administrative fairness will probably fall securely into place.

2) THE DECISION-MAKER

The decision-maker is the individual who will receive the information and recommendations from the investigator, while at the same time providing the affected party with reasonable opportunity to present his/her perspective prior to reaching a decision.

An individual acting in a decision-making capacity should take measures to ensure the principles of natural justice have been adequately addressed. Those principles are as follows:

- adequate notice given to the affected party about the decision to be made;
- holding of a fair hearing (as practical and workable) at which both sides may be heard;
- fairness to the parties involved;
- lack of bias exhibited;
- decision-maker cannot sit in judgment of his/her own cause — should be removed from the situation as much as possible;
- actions to be made in good faith;
- a person cannot be both a witness and a judge at the same time (the reason for separating the investigator and decision-maker roles); and
- a decision-maker's verdict must be based on sufficient evidence (thus, the significance of an investigator doing a thorough and effective investigation).

3) THE REVIEW OFFICIAL

The statutory provisions providing for a review official in the Act are designed to ensure a degree of administrative fairness beyond the initial decision-making level.

The right to have a decision reviewed by the review official applies to those parties who are subject to administrative penalties (Sections 117(5)(d) and 118(4)), orders to abate or remove a fire hazard (Section 82), a determination relating to denial of compensation (i.e., Section 95(2): fire cause; failure to carry out required fire suppression activities; failure to comply with regulations which contributed to the cause or spread of fire), or a stop work order for a party stated to be in non-compliance with the Act or regulations (Section 123).

The review official should be someone in a senior position within the organization, removed both from the investigative and initial decision-making process. The Act does not specify exactly who this person should be.

Section 127 contains the basic authority for the review official to conduct a review of the above-mentioned determinations, and Section 129 elaborates on the details of such a review. The latter section stipulates that if not deemed necessary, the review official has the option of not conducting an oral hearing and instead may decide an issue solely on written explanation provided by the party.

The scope of the review official's authority encompasses:

- confirmation, variance or rescission of the initial determination;
- referral back to the initial decision-maker a determination with or without directions attached;
- making a determination, if the review concerns a failure to make a determination.

(Section 129(5)).

It should be noted that the review official plays a pivotal role in the legislated process, because all issues that are to be appealed will first be dealt with by this official.

Refer to Diagram 2 for illustration and further explanation of how the review official fits into the Review Process under the Act.

III. THE APPEAL PROCEDURES

A decision-maker or review official exercising discretion under the *Forest Practices Code* should keep in mind that the Act provides an appeal process for those parties dissatisfied with a decision.

Most decisions will be revisable by the Forest Appeals Commission. In addition, there are other appeal processes that a decision-maker or review official should be aware of. A discontented party may take a grievance to one of the bodies discussed in this section of the report.

A decision-maker or review official then is advised to be familiar with the roles of these bodies as they relate to decisions made by government officials.

1) THE OMBUDSMAN

The provincial Office of the Ombudsman is a body independent from government ministries, with the mandate to ensure that government officials are acting in accordance with the principles of fundamental justice and administrative fairness. The office's enabling piece of legislation is the *Ombudsman Act*, R.S.B.C. 1979, c.306.

Section 10 of the Act establishes that the Ombudsman has the authority to investigate "a decision or recommendation made, an act done or omitted, or a procedure used by an authority". This power overrides any other statutory provision that might state that a decision is final.

However, the role of the Ombudsman is not to replace the appeal mechanisms established in an Act. Rather, the Ombudsman is an avenue of last resort to which an aggrieved party might complain if dissatisfied with the treatment received through a given process.

In a 1987 report entitled "Liquor Control and Licensing Branch Fairness in Decision-Making", the Ombudsman made a series of recommendations which could readily be applied to any public body exercising discretion (for example, decision-makers acting under various provisions of the *Forest Practices Act*).

Among these recommendations were the following comments which illustrate the perspective taken by the Office of the Ombudsman when investigating complaints:

> "That [the decision-maker], before making a decision, give notice of his/her proposed decision to the affected party who would then have the option of requesting a full hearing..." (p. 40, Recommendation 8).
>
> "That notice of [the decision-maker's] proposed decision at a minimum include the following: the consequences to the affected party of a negative decision; the procedure to be followed at the hearing; explanation of the relevant legislation and policy; and the proposed reasons with a discussion of the important facts" (p. 41, Recommendation 9).
>
> "That, if the proposed decision is confirmed after the hearing, full written reasons be provided to the affected party" (p. 41, Recommendation 10).
>
> "That, if the proposed decision is confirmed, information concerning statutory appeal provisions should be given to the affected party" (p. 41, Recommendation 11).

The other recommendations concerned legislative provisions and the need to establish an independent commission (like the Forest Appeals Commission). If you are interested in reading the entire report, the Ombudsman Reports should be available both at public libraries and at the Legislative Library in Victoria.

2) THE FOREST APPEALS COMMISSION

The *Forest Practices Act* provides for an appeal procedure for "determinations" made under the Act. Although this report will discuss only those larger decisions for which appeals are more likely to result, decision-makers should be aware that *many* of their decisions may eventually be appealed through this Forest Practices appeal process.

Before proceeding to the Forest Appeals Commission, a party will first have to request a review which would be conducted by a designated "review official." There are timelines associated with requesting a review and appealing to the Commission (as noted in the diagrams attached to this report).

This Commission is the statutorily-mandated body responsible for hearing appeals under Part 6, Division 4 of the Act. Appeals that will be heard by the Commission include:

- notice of determination to remove or abate a fire hazard (section 82);
- determination that a person:
  - caused the fire,
  - failed to comply with Section 92 (failure to carry out fire suppression responsibilities), or
  - contributed to the cause or spread of a fire; and
- regulatory penalties levied under Section 117 or Section 118.

These topics will be discussed individually and in greater detail further in this report.

In regard to the party's right to initiate an appeal, Section 130 establishes that such an appeal can occur only *after* it has been to the review official and still remains outstanding and unsettled; moreover, the Forest Appeals Commission will look to the decision of the review official.

The time limits associated with such an appeal are set out in Section 131. (NOTE: It is significant to note that the time limits apply also to appeals initiated by the Forest Practices Board). From the time of receiving the decision of the review official, the affected party has *three weeks* to initiate an appeal; after that point, the right to appeal will be lost unless the Chair of the Commission extends the time limit (Section 131(2)).

It is worth noting that the Commission has the statutory authority to hear evidence and to consider submissions relating to the facts, the law and jurisdiction. Documentation will in particular prove most useful in relation to the submissions concerning the facts of what has transpired. In relation to Fire Protection appeals, the majority of concerns will likely focus on the relevant facts and procedure followed by involved Forest Service personnel.

The powers of the Commission, as set out in Section 138, are:

- to confirm, vary or rescind the previous decision;
- to make any decision within the mandate of the review official (and the initial decision-maker); and
- to refer the matter back to the person who made the determination (N.B.: The Act does not state whether such a referral would go back to the review official or the initial decision-maker, but it would presumably be to the review official as any appeals to the Commission will be appeals of the review official's decisions).

The other responsibilities of the Commission are to provide evaluations of the review and appeal processes in place under the Act, and to make any recommendations concerning changes to be made to the appeal process in place.

3) THE FOREST PRACTICES BOARD

Although the Board will not hear appeals under the Act, anyone involved in a determination or decision-making process should be aware of the role of the Board.

Its primary role is advocate of the public, and its mandate is to deal with complaints and investigate determinations. (The complaints with which the Board will deal will be prescribed in regulation; applicable regulations should be consulted for further detail.)

The Board has the further authority to request that the Forest Appeals Commission review certain decisions (these decisions include a forest official's decision that a fire hazard has not been removed or abated in compliance with the Act, decisions concerning denial of compensation, fire cause determinations, and decisions to impose penalties for contravention of the Act or regulations. Details associated with the Board's powers with respect to requesting reviews are contained in Section 128.

4) THE COURTS

Government officials involved in the process leading to a party being charged with an offence (which includes anything from an administrative penalty to a ticket) should be aware that any decisions made might eventually be subject to judicial review if the party is dissatisfied with the appeal mechanisms in place under the *Forest Practices Act*.

Accordingly, those individuals involved at any level of the process leading to penalizing a party should be aware that if they do not fulfill the requirements of administrative fairness, a court might possibly arrive at the conclusion that the government officials' conduct constituted "abuse of power". In the Supreme Court of Canada decision, *Immeubles Port Louis Ltee.* v. *Lafontaine (Village)* [1991] 1 S.C.R. 326, Jacques, J. summarized "abuse of power" as "an... act committed for unreasonable or reprehensible purposes, or purposes not covered by legislation" (p. 349).

"Abuse of power" is a close relative of the concept of "abuse of process". Although "abuse of process" is generally associated with the conduct of court officials, the concept was applied, in a British Columbia case, to a regulatory agency. In *R.* v. *Northwood Pulp Timber* (1992) 9 C.E.L.R. (N.S.) 289, the provincial court judge concluded that the Ministry of Environment's conduct amounted to "abuse of process". Quoting from *Abitibi Paper Co.* v. *R.* (1979) 8 C.E.L.R. 98 (Ont. C.A.) at 496, the judge stated that any conduct that is "vexatious, unfair [and] oppressive... [is] conduct deemed to be in abuse of power".

The elements of "abuse of power" and "abuse of process" could be said to be the antithesis of what administrative fairness is all about. In ensuring administrative fairness, the Forest Service is also ensuring that these abuses are averted.

In addition, the British Columbia Supreme Court is the last avenue of appeal (beyond the Forest Appeals Commission) for grievances under the *Forest Practices Act* in regard to matters relating to law and jurisdiction.

IV. SPECIFIC PROCESSES UNDER THE NEW LEGISLATION

1) FINES

APPLICABLE SECTIONS

Section 76: Use of open fires in or within 1 km of a "forest" without complying with burning permit or regulation. *Corresponding penalty in Section 143(1).*

Section 79: Failure to assess fire hazard or to submit results of assessment to designated forest official. *Corresponding penalty in Section 143(2).*

Section 80: Failure to abate or remove a fire hazard in accordance with the regulations. *Corresponding penalty in Section 143(4).*

Section 84: Contravention of an order not to enter a restricted area. *Corresponding penalty in Section 143(4).*
- Non-compliance with the regulations in place in a restricted area. *Corresponding penalty in Section 143(4).*

Section 85: Failure to comply with an order to leave a specified area. *Corresponding penalty in Section 143(4).*

Section 86: Failure to report an unattended fire in or within 1 km of a "forest". *Corresponding penalty in Section 143(4).*

Section 87: Dropping a burning substance in or within 1 km of a forest in non-compliance with the Act. *Corresponding penalty in Section 143(2).*
- Failure to take all reasonable steps to extinguish the burning substance. *Corresponding penalty in Section 143(2).*

Section 88: Failure to take all reasonable steps to extinguish fire or (if necessary) to immediately report the fire if fire started in non-compliance or spreads beyond control. *Corresponding penalty in Section 143(2).*

Section 91: Failure of one engaged in an industrial activity to carry out "fire preparedness responsibilities" (as described in the Act and regulations). *Corresponding penalty in Section 143(3).*

Section 92: Failure of one engaged in industrial activity to carry out "fire suppression responsibilities" (as described in the Act and regulations). *Corresponding penalty in Section 143(2).*

Section 94: Failure of a person to comply with a requisition of facilities, equipment and personnel to carry out fire control/suppression activities. *Corresponding penalty in Section 143(4).*

Although the Act provides for both penalties and offence charges to occur simultaneously, persons involved in the administrative process should keep in mind that if a person is charged with an offence and subsequently a penalty is levied for the same contravention (or vice versa), the courts may look on this as an example of "double jeopardy" unless it can be argued successfully that the offence ticket and the penalty serve two separate purposes. This possibility is an important factor for an investigator or decision-maker to keep in mind, as offences can be appealed through the courts.

As listed above, the *Forest Practices Act* establishes specific offences. Further offences will be contained in the regulations. Unlike under the *Forest Act*, the *Offence Act* will apply *only* insofar as it establishes that one can be ticketed for an offence. The offences themselves will be listed in the Act and in the regulations of the *Forest Practices Code*. The procedure for dealing with offences, however, will not change.

2) ADMINISTRATIVE PENALTIES

Section 117 of the Act provides the statutory authority for levying administrative penalties "up to the amount and in the manner prescribed" (by regulation).

Imposing such penalties requires a high degree of administrative fairness when dealing with the affected party.

Section 117(5) in fact stipulates the obligatory administrative fairness measures that must be carried out by the senior official (the "senior official" is defined as a District or Regional Manager, or an official who is both in a senior position and is designated as a senior official by the Minister). Section 117 states that a senior official must make the determinations according to this section.

It is obligatory that the senior manager give a notice of determination to the party, including:
- the nature of the contravention;
- the amount of the penalty;
- the date by which the penalty must be paid;
- the person's right to review and appeal, including the title and address of a review official to whom a request for a review may be made.

The Act does not stipulate that before actually assessing the penalty, the senior official must hear the party's point of view; however, as with the other decision-making processes included in the report, the official must assess whether a higher degree of fairness (and corresponding perception by the party) would occur by providing the party with an opportunity to be heard before a decision concerning a penalty is made.

Generally, a party under regulation will be in a good position to provide the information required for the senior official to arrive at an informed and impartial decision.

A point worth noting is that the penalty provision concerning collecting costs for the government carrying out work to abate or remove a fire hazard (when a party has disregarded a notice to do so) is found in Section 118(4) and is discussed in more detail in the 'Responsibility for Abatement and Removal of a Fire Hazard' section of this report.

3) COMPENSATION

A) DENIAL OF [or]
B) CALCULATION OF AMOUNT TO BE AWARDED

Introduction

Obviously, the most basic level of compensation determination is the decision as to whether or not compensation will in fact be paid out to the involved party. However, once this initial determination is made, the persons involved in the decision-making process are well-advised to be familiar with the various obligations attaching to each possible decision.

As would be expected, the decision to deny one compensation will involve a higher level of formality — both in relation to party notification and feedback — than will a decision to award one compensation. As with all other decisions, perceptions of fairness underlie this process.

Costs for which a given party may expect compensation include:
- provision of facilities and equipment the person owns or has use of over and beyond the party's initial fire suppression responsibility outlined in Section 92; and
- wages for employees recruited to fight fire, or a recruited individual's wages.

This next section will outline the general steps to be followed, both in relation to denial of and awarding of compensation.

In addition, Diagram 3 illustrates the steps involved in the compensation analysis. The diagram focuses on decisions concerning denial of compensation because of the more complex considerations attached to such determinations.

A) DENIAL OF COMPENSATION

Section 95(4) outlines the possible situations in which a determination to deny one compensation might arise. The section stipulates that if an order has been made for equipment, facilities, vehicles and personnel over and above that party's basic initial fire suppression responsibilities, that compensation may be denied.

The possible reasons for denying a party compensation for the above-listed items are as follows, as listed in section 95(2):
- the party caused the fire; and/or
- the party did not carry out their basic fire suppression responsibilities (reporting a nearby fire and carrying out initial fire suppression); and/or
- the party failed to comply with a regulation and that failure contributed to the fire.

i. Determination that a party caused a fire

Determining that someone caused a fire is a serious allegation, particularly if expensive resources are required to fight the fire in question. For such an allegation to stand, a properly-conducted and well-documented and supported investigation is of utmost importance.

The investigator's findings will likely not only be used to deny one compensation but will also form the basis upon which civil proceedings for costs may be commenced against the party in question. Because of the severe implications attached to an allegation of having caused a fire, any determinations of this nature may well be appealed at a later time. *The foundations* upon which the process will build itself *are crucial* and *must be solid.*

Dealing only with a decision to deny compensation, for the time-being, the investigator should conduct the investigation in an independent manner, communicating his/her findings as much as is practicable in the circumstances. At all times, however, the investigator should be cautious about receiving information from the party or witnesses (as outlined in an enforcement course — *Charter* implications, etc.).

Upon completion of the investigation, the party should be notified (written or oral) about the investigator's findings and the fact that these findings are to be submitted to a designated forest official for a determination.

ii. Determination that a party did not carry out their basic fire suppression responsibilities

A party is not entitled to claim compensation for carrying out initial fire suppression (Section 95(5)). It is advisable, therefore, that any determination concerning compensation stipulate the resources which were considered necessary to meet the initial fire suppression responsibility.

Section 92 establishes the obligation on the party to carry out initial fire suppression in accordance with the regulations. However, the party will expect compensation for services rendered over and above the initial fire suppression requirements.

However, if a party fails to meet the initial fire suppression responsibility (as specified in regulation), the implications are two-fold: That party will not have to be compensated for any facilities, equipment and personnel otherwise worthy of compensation. In addition to this general denial of compensation, the party has contravened the requirements of Section 92 of the Act, and accordingly will be assessed a fine under Section 143(2). This implication will be particularly significant in the situation where one is requisitioned to provide equipment, etc. under Section 94. If the party is subject to a requisition *and* has not complied with the fire suppression responsibilities under Section 92, that party will not be entitled to *any* compensation (subject, of course, to the discretion of the Designated forest official; there may be times when the designated forest official feels it is more just that the party be paid some compensation for the requisitioned items).

iii. Determination that the party failed to comply with a regulation and that failure contributed to the fire

According to Section 95(2)(c) of the Act, any non-compliance with a regulation that is found to have contributed to a fire is reason enough to deny compensation to the subject party. Arriving at such a finding, of course, includes the necessary determination of what exactly caused the fire and so assessing causation necessarily overlaps with this provision. However, because of the different wording — 'contributed' as opposed to 'caused' — it is arguable a lower threshold test could be used for this latter provision. The decision-maker will need to carefully assess exactly what conduct satisfies the 'contribution' requirement.

As with all other determinations, this assessment will require both a solid investigative foundation and effective communication with the party.

B) CALCULATION OF AMOUNT TO BE AWARDED

If there is to be an award of compensation, the next question is how much the party is to be compensated. The numerous factors that may be considered make for a situation where the party's input will be crucial to arriving at a well-considered and fair assessment of how much should be paid out.

It is worth noting that this decision is among those determinations which are not necessarily capable of being appealed to the Forest Practices Commission (unless the calculation attaches to another determination which would be appealed to the Commission).

Therefore, because the Forest Appeals Commission will not be involved in assessing these determinations, the decision-maker should be aware of the roles of the Ombudsman (discussed in the 'Appeal Processes' section of this report) and the Forest Practices Board (as will be further outlined in the relevant regulation).

4) RESPONSIBILITY FOR ABATEMENT AND REMOVAL OF A FIRE HAZARD

A) THE INSPECTION
B) DETERMINING WHETHER A FIRE HAZARD EXISTS
C) ARRIVING AT A DECISION

A) THE INSPECTION

The initial questions to ask when assessing whether a party has abated or removed a fire hazard are:
- whether there is a fire hazard in or within 1 km of a forest (as defined in the Act) on Crown or private land; and
- whether the fire hazard exists as a result of an industrial activity.

In order to answer these questions, an inspection of the site in question constitutes the necessary initial stage of the process.

The powers of entry onto land for the purpose of inspecting for fire hazards is laid out in Section 107(3). The wording is quite general in its scope, and requires only that the inspector have reasonable grounds to believe an activity or condition exists that may cause a fire hazard. The inspector is advised to document these reasons at the outset of the inspection and to communicate these reasons to the involved party.

At the same time, the inspector should be cautioned that this inspector role may at a later point be construed as being more significant as an investigation, particularly if a contravention is found with serious implications attached to it. In other words, the drawing of a distinction between inspection and investigation is tenuous and should not overshadow the continuous need to demonstrate both administrative fairness and compliance with the *Charter of Rights and Freedoms*.

B) DETERMINING WHETHER A FIRE HAZARD EXISTS

Having collected information about an existing fire hazard, the inspector should notify the party (if practicable in the circumstances) the findings will be passed on to a decision-maker. The inspector will further communicate the findings (evidence, etc.) to the designated forest official (decision-maker) for determination of":
- whether a fire hazard exists in or within 1 km of a "forest"; and
- whether the fire hazard is a result of an industrial activity.

The inspector should demonstrate a role quite separate from this decision-making role; the "cop" and the "judge" should be quite distinct. In other words, the inspector should only pass on the findings of the inspection, leaving it to the decision-maker to determine whether a fire hazard does in fact exist.

Upon receiving the inspector's information, the decision-maker could notify the party to receive any input that the party feels is relevant in order to arrive at a fair conclusion as to whether or not a fire hazard exists as a result of that party's undertakings. However, this immediate party notification is not a statutory requirement.

The test that should be used in assessing whether or not to involve the party at this initial stage of the decision-making process is whether it is practicable and possible (given workload and time constraints) to involve the party. A decision-maker will have to consider fairness and impartiality and pose the question: "Can I make an impartial decision, given the information I have before me?".

As stated earlier in this report, if the party perceives that it is receiving fair treatment, that party will be less likely to request a review of a decision or an appeal at a later date.

Having ensured the decision is as impartial and fair as possible in the circumstances, the decision-maker must assess whether or not the statutory responsibility for abating and/or removing the fire hazard has been met by the relevant party (Section 80 outlines who has this responsibility).

C) ARRIVING AT A DECISION

Finally, if the designated forest official determines that a fire hazard does exist and has not been removed as required (considering both the Act and the regulations), Section 82 provides the authority to send to the party a notice of determination to remove or abate the hazard.

Section 118 elaborates on this notice of determination; the following list outlines the necessary inclusions of information in the notice of determination given to the party:

- the nature of the contravention;
- the nature of the work to be done to remedy the contravention;
- the date by which the work must be completed
- the party's right to a review and appeal (include title and address of the review official); and
- the right of the government to carry out the work and levy a penalty if the party does not comply with the order (Section 118(2)).

The last two points from the above list are the most significant, from an administrative fairness perspective. Subsection 118(2)(e) in particular carries with it significant implications for the party, and underlines the importance of ensuring administrative fairness is being practiced. If the decision is made that the government will carry out the work to abate or remove the hazard, Section 118(5) states that a senior official (i.e., a District or Regional Manager or someone designated as a senior official for the purposes of the Act) 'may levy against the [party] who failed to comply with the order a penalty in an amount [determined] to be equal to the expenses incurred in carrying out the work'.

Upon completion of the work, the senior official is obliged to provide the party with an accounting of expenditures; however, it is advisable that consultation take place with the party before the work is done, if possible. The party should be entitled to seek a review and appeal of the amount contained in the accounting, because Section 118(5) is among the provisions to which Section 127 ('person affected by a determination may have it reviewed') applies.

Diagram 4 illustrates this entire process relating to determinations concerning failure to abate or remove a fire hazard.

At the same time, the party can be fined for failure to comply with Section 80; the authority for imposing this fine is in Section 143(3). Although charging someone with a statutory contravention under Section 143 and determining that a party must remove and/or abate a fire hazard necessarily overlap, the implications attached to these two "sanctions" are quite distinct.

On the one hand, appeals relating to the contravention would be dealt with directly within the court system, whereas the latter determination is subject to a possible administrative review appeal process.

5) COLLECTING FOR COSTS: FIRE CAUSATION

A) DISTINCTION — LEGISLATIVE/REGULATORY CONTRAVENTION AND FIRE CAUSE
B) THE "DECISION-MAKER" AND THE DEMAND LETTER
C) THE INVESTIGATOR AND THE FIRE CAUSE INVESTIGATION
D) THE COURT'S ASSESSMENT — AN OVERVIEW OF NEGLIGENCE

A) THE DISTINCTION BETWEEN LEGISLATIVE/REGULATORY CONTRAVENTION AND FIRE CAUSE

Assessing causation in this context necessarily hinges on being able to establish negligence. Negligence is a tort to be decided on the basis of both fact and law. Decisions of this nature relating to tort issues fall outside the jurisdiction of the provincial government. Section 96 of the *Constitution Act*, 1867 concerns the appointment of judges to the courts. In the Supreme Court case *Re: Residential Tenancies*, 1979 [1981] 1 S.C.R. 714, the court stated that the provincial government does not have the authority to take over a function of a court. The court stated at p. 738:

> The question whether the powers or jurisdiction conferred by the statute are analogous to, in broad conformity with, the kinds of powers or jurisdiction historically exercised by the courts [which includes] an analysis of the law, an application of the applicable law to the particular facts, and then a judicial decision and a consequent order.

Tort law, including negligence, is adjudicated by the courts today, as it was in 1867.

Because of this divided jurisdiction, a government official should not be analyzing the law and applying it to the facts at hand, particularly when an offence or bill for costs is going to arise out of such an assessment. Distinguish this approach from determination of causation as it relates to denial of compensation (see Section 92). In that scenario, the test for causation does not require that the standard of negligence be met.

Negligence only becomes significant if the result of the determination could be characterized as an offence (as Section 161 of the *Forest Act* was). Arguably, any assessment of costs, penalty or fine indicates an offence, whereas assessment of compensation owed does not.

The content of Section 161 of the *Forest Act* has not been carried over to the *Forest Practices Act* and therefore, that intent of that section is no longer in effect. The section combined contravention offences with the obligation for the party to pay for costs incurred by the Crown and the value of Crown resources affected. The former part of the section (contravention offences) will still be decided by the decision-maker within the Forest Service. However, the collection of costs incurred by the Crown and the value of Crown resources are issues that flow directly from whether or not the party *caused* the fire. This causation issue must be separated from the contravention offence or penalty.

Decision-makers must be sure to separate legislative/regulatory contraventions and fire cause in this context as two distinct issues.

B) THE "DECISION-MAKER" AND THE DEMAND LETTER

Determining a violation is a relatively straightforward decision for the decision-maker to make, provided that s/he takes into consideration the administrative fairness principles outlined in this report. However, fire cost billing that hinges on whether or not the party caused the fire, must necessarily allow the party the right of appeal to the courts.

The process then requires the decision-maker to issue a demand letter to the party for costs and damages rather than a bill, as was the practice under the *Forest Act*. The demand letter gets away from the notion of a court-like assessment. Upon receiving such a demand letter, the party might pay the requested expenses, at which point the issue will be settled. However, if the party refuses to pay, the Forest Service will have to proceed to court and bring civil action against the party. As stated above, the court, in assessing liability and damages, will apply a negligence test.

The function of the decision-maker, then, is as a sort of intermediary between the fire cause investigation and the court process. The principles of administrative fairness should still be applied. If the party feels s/he has been treated fairly and has had adequate opportunity to be heard, there will be less likelihood of an appeal to the courts. However, the decision-maker should remember that fairness, impartiality and good faith should be evidenced at all times.

C) THE INVESTIGATOR AND THE FIRE CAUSE INVESTIGATION

The function of the investigator is of pivotal importance in assessing amounts of both costs incurred by the Crown and damage to Crown resources. If the Forest Service is required to proceed to court to recover damages, the court will look to the content of the investigator's report. If the investigator has utilized the Wildfire Investigation Report and investigated thoroughly, the court will more likely decide in favour of the Forest Service.

D) THE COURT'S ASSESSMENT — AN OVERVIEW OF NEGLIGENCE

Although officials working for the Forest Service will not be deciding whether or not a given party acted negligently, a basic familiarity with the elements of negligence is useful insofar as the investigator and the person issuing the demand letter understand what factors a court will consider if an issue proceeds to that level. Keep in mind that this overview is for background information only and is in no way intended as a guide. As noted, only a court can decide negligence.

The widely-accepted legal definition of negligence is:

- an independent tort which consists of breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff; and
- conduct which does not meet the standard required to protect others from the unreasonable risk of harm. (John G. Fleming, The Law of Torts 6th ed. at p. 101)

The two basic elements of negligence, then, are duty of care and standard of care not met. Both of these requirements will be in issue in the courtroom and must first be established in order for negligence to be shown. These tests will be applied to the particular circumstances of a case.

6) BILLING FOR COSTS OF FIGHTING A FIRE ON PRIVATE LAND

Unlike the above procedure for billing for costs of a fire on Crown land caused by the party, a fire on private land and other non-Crown lands does not fall under the jurisdiction of the provincial Forest Service. Rather, the discretion to fight such fires is with a "designated forest official" who feels that adequate fire suppression is not being carried out and forest or range resources are being threatened by fire.

If the decision is made to fight a fire on these lands, the Act stipulates that the owner of private land owes the government the costs of the operations as a debt due and payable on demand. Collection of costs for fighting fire on other non-Crown lands will occur in compliance with the terms of the applicable contract. The negligence concerns outlined in the previous section do not apply to this type of determination.

However, because of the nature of this decision, the amount assessed to be billed the party may well be a matter of contention and as such, the party should be involved at the initial decision-making stage, particularly in regard to the party's perception of the amounts involved.

Section 89(2) establishes that when the government causes fire control or suppression operations to be carried out on private land where necessary, the *reasonable* cost of the operation is a debt due to the government, payable on demand.

It is worth noting that the *Forest Practices Act* does not specifically provide for an appeal process for decisions under Section 89(2); however, because of the other means of recourse outlined in the 'Appeal Processes' section of this paper, the investigator and decision-maker should ensure that the process leading up to the billing is as fair as possible (i.e., inclusion of the party in the process, etc.).

V. "QUICK REFERENCE" ADMINISTRATIVE FAIRNESS GUIDELINES

The following information is derived from various sources, including the Attorney General Legal Services and the Office of the provincial Ombudsman.

1) THE DECISION-MAKER

To ensure administrative fairness, the following list should be kept in mind by any person involved in the decision-making procedure under the Act or regulations.

While exercising statutory discretion, a decision-maker should ask him/herself the following questions:

AUTHORITY

- Do you have the powers to do what you want to do? Make sure the decision-making power has not been wrongly delegated.
- Are you exercising your powers for the purpose they were given?
- Are you acting for the right reasons?
- Are you acting in a way which a court may regard as abusing your powers?
- Are your powers and responsibilities to arrive at a decision exercised in a consistent, thorough and fair manner, having regard for the dignity and privacy of individuals affected?

INDIVIDUAL RIGHTS

- Have affected parties been put in the picture sufficiently so they have a fair opportunity to make a representation?
- Are parties affected by a decision being given adequate opportunity to present evidence in support of their position, including the opportunity to examine and comment on the evidence from other sources which may be considered in arriving at a decision?
- Have you communicated any decisions to express that you have considered an individual application to see whether it merited an exception being made?
- Have you or anyone involved in the decision-making process any conflicting interest that would lead someone to suppose there is bias?
- Are there adequate procedures to deal with situations where individual decision-makers are subject to conflicting interests which may affect, or appear to affect, the making of an important decision?
- Are all parties who may be adversely affected by a decision or action given adequate and timely notice of the investigation/hearing process, the nature of the resulting decision or action and its possible implications?
- Have you considered the circumstances of the case or blindly followed policy?

OBJECTIVITY

- Have you taken into account all relevant information?
- Have you listened to and considered the point of view of those likely to be affected by the decision?

- Have you allowed in your timetable sufficient time for consultation and representation?
- Have you made up your mind in advance, or given that impression?
- Are there grounds for thinking you may not be acting fairly?

ACTION

- Are the reasons you spell out for your decision the right reasons?
- Have your words or actions in the past led anyone to believe your current actions or intentions are different?

2) THE INVESTIGATOR

To ensure administrative fairness and a well-documented investigation, the investigator should keep in mind the following questions.

AUTHORITY

- Do you have the powers to do what you want to do?
- Are you exercising your powers for the purpose they were given?
- Are your powers and responsibilities to conduct an investigation exercised in a consistent, thorough and fair manner, having regard for the dignity and privacy of the individuals affected?
- Are you acting in a way which a court may regard as abusing your power?
- Are you acting for the right reasons?

INDIVIDUAL RIGHTS

- Have you listened to and considered the point of view of those likely to be affected by the decision? (Again, keep in mind the *Charter,* if there is a possibility of the person being charged with an offence).
- Are all the parties who may be adversely affected by an action given adequate and timely notice of the investigation process, the nature of the resulting recommendation and its possible implications?
- Have you followed the requirements of the *Charter of Rights and Freedoms*? (This is an enforcement issue.)
- Have you or anyone involved in the investigation process any conflicting interest that would lead someone to suppose there is bias?

OBJECTIVITY

- Have you sufficient evidence for all conclusions reached in your report?
- Have you taken into account all relevant information? Have affected persons been put in the picture sufficiently so they have a fair opportunity to make a representation? (N.B.: Keep in mind the *Charter.*)
- Have you excluded irrelevant considerations?

- Have you considered the circumstances of the case or blindly followed policy?
- Are there any grounds for thinking you may not be acting fairly?
- Have you allowed in your timetable sufficient time for consultation?

DOCUMENTATION

- Are you keeping detailed notes?
- Have you sufficiently documented all conclusions at which you arrived?

DIAGRAM #1:

OVERVIEW OF THE ADMINISTRATIVE PROCESS

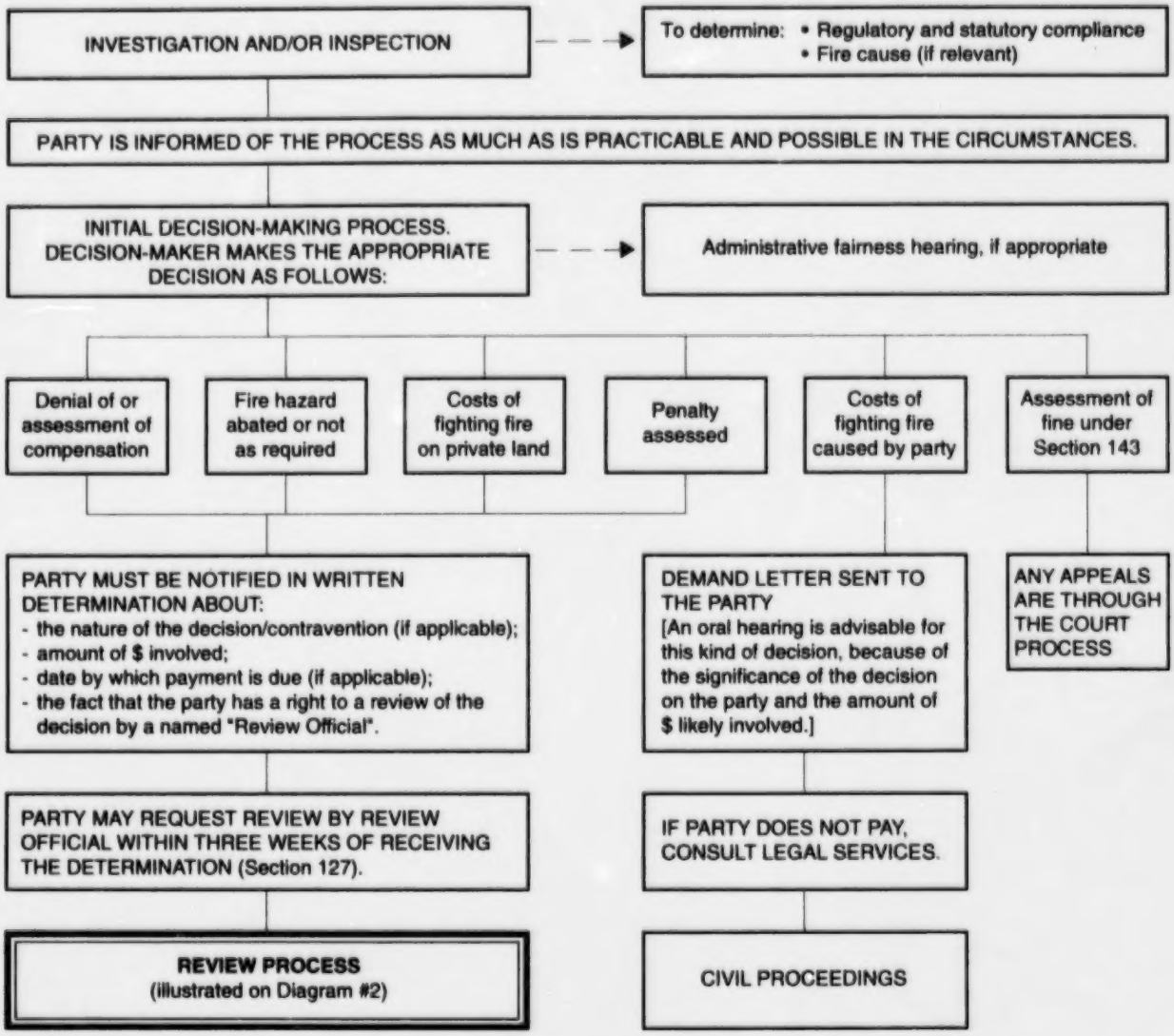
INVESTIGATION AND/OR INSPECTION
To determine: • Regulatory and statutory compliance
• Fire cause (if relevant)
PARTY IS INFORMED OF THE PROCESS AS MUCH AS IS PRACTICABLE AND POSSIBLE IN THE CIRCUMSTANCES.
INITIAL DECISION-MAKING PROCESS. DECISION-MAKER MAKES THE APPROPRIATE DECISION AS FOLLOWS:
Administrative fairness hearing, if appropriate
Denial of or assessment of compensation
Fire hazard abated or not as required
Costs of fighting fire on private land
Penalty assessed
Costs of fighting fire caused by party
Assessment of fine under Section 143
PARTY MUST BE NOTIFIED IN WRITTEN DETERMINATION ABOUT:
- the nature of the decision/contravention (if applicable);
- amount of $ involved;
- date by which payment is due (if applicable);
- the fact that the party has a right to a review of the decision by a named "Review Official".
DEMAND LETTER SENT TO THE PARTY
[An oral hearing is advisable for this kind of decision, because of the significance of the decision on the party and the amount of $ likely involved.]
ANY APPEALS ARE THROUGH THE COURT PROCESS
PARTY MAY REQUEST REVIEW BY REVIEW OFFICIAL WITHIN THREE WEEKS OF RECEIVING THE DETERMINATION (Section 127).
IF PARTY DOES NOT PAY, CONSULT LEGAL SERVICES.
REVIEW PROCESS
(illustrated on Diagram #2)
CIVIL PROCEEDINGS

DIAGRAM #2:
THE REVIEW PROCESS

Decision-making sections to which the following process apply include: Section 82 *"Order to abate or remove fire hazard"*; Section 95(2) *"Notice of determination leading to denial of compensation for fire control/suppression operations"*; Sections 117 and 118(4) *"Penalties"*; Section 118(2) *"Notice of determination by a senior official"*.

Relevant determination (with date specified) given to the party. The Decision-maker should notify the party in the determination that they have a right to a review of the decision, and identify the name, position and address of the Review Official.

N.B.: A review may be initiated by the Forest Practices Board instead; the same procedure would apply.

According to Section 127, the party subject to the determination has a right to a review within three weeks after receipt of the determination.

The time limit may be extended by the Review Official.

- The "Review Official" must *not* have made the original determination, *nor* participated in the investigation stage (Section 129(3)).
- Other details concerning the specifics of the "Review" process are contained in Section 129 of the Act.

Time limit for requesting a review expires.

Party loses statutory right to request a review of the original decision (Section 127(5)); decision is binding on the party.

Issue settled

Written decision given to the party who requested review.

Original decision confirmed or varied by the Review Official (Section 129(5)(a)) or referred back to the initial Decision-maker.

Original decision rescinded by the Review Official (Section 129(5)(a)).

Issue settled

Within three weeks of receiving the Review Official's decision, the party may appeal to the Forest Appeals Commission by way of a notice of appeal (Section 131).

The Forest Appeals Commission will follow procedure set out in regulation.

"A party may:
a) be represented by counsel;
b) present evidence;
c) if there is an oral hearing, ask questions; and
d) make submissions as to facts, law and jurisdiction."
(Section 131(8))

APPEAL HEARING

The Commission confirms, varies or rescinds the appealed decision. The decision is binding on matters of *fact* (Sections 138 to 141).

Matters of *law* or *jurisdiction* may be appealed to the British Columbia Supreme Court within three weeks (should not be a commonplace occurrence). See Section 141.

DIAGRAM #3:

COMPENSATION

(APPLICABLE SECTIONS: SECTIONS 90 AND 95)

Fire Cause Investigation

Administrative fairness role — Investigator: *The Investigator must provide the party with information; however, collecting information from the party will be more complicated because of potential Charter implications and the protocol of conducting an investigation as established in the Act (particularly if such an investigation will lead to charging someone with an offense). This diagram deals strictly with the process for determining compensation.*

Party notified about Investigator's findings and their implications.

** If collection of damages may arise (in addition to compensation issues), consult Legal Services.*

Administrative fairness hearing, if appropriate.

Designated forest official (proposed amendment to Act changing 'Regional Manager' to 'designated forest official') makes determination about the circumstances of the fire.

1 Did the party cause the fire? (Section 95(2)(a))

2 Did the party comply with fire suppression responsibilities under Section 92? (Section 95(2)(b))

3 Did the party comply with the relevant regulations? (Section 95(2)(c))

1: No / Yes

2: Yes / No

3: No / Yes

Ensure party complied with 2) and 3) above.

Ensure party complied with 1) and 3) above.

Did this failure contribute to fire?

Ensure party complied with 1) and 2) above.

Potential civil proceedings.

No / Yes

Assess appropriate fine(s) for non-compliance. (See Section 143)

Section 120 — Notice of Determination

Regional Manager must ensure principles of administrative fairness are followed . . . .

Regional Manager makes determination compensation will not be paid for any/all of the services ordered under Section 94. (See Section 95(4))

Regional Manager *must* give party notice of this determination, setting out:

1) *all* relevant information that contributed to the decision;
2) the results of the determination (e.g., amounts of compensation denied, etc.), as seen to be appropriate in the circumstances; and
3) enough information for the party to respond:
   i) within a specified timeframe; and
   ii) to a named designed Review Official.

Appeal process is provided for in the legislation. Denial of compensation decisions may be appealed to Review Official / F.A. Commission. (See Diagram #2)

NOTE: A Decision-maker's assessment of amounts of compensation payable would also fall into this general framework but has not been here included in detail because of the less contentious nature of these determinations (see text of report for further information).

DIAGRAM #4:

RESPONSIBILITY FOR ABATEMENT AND REMOVAL OF A FIRE HAZARD

(APPLICABLE SECTIONS: SECTIONS 80, 82, 118 AND 143)

Does a fire hazard exist on Crown land in or within 1 km of a "forest"?

No

Does a fire hazard exist on *private land* in or within 1 km of a "forest"?

No

Yes

Is the fire hazard a result of an industrial activity?

Yes

Yes

Is the fire hazard a result of an industrial activity?

No

Adequate notice to the party; holding of a hearing, as appropriate; demonstrated fairness; lack of bias; impartiality; good faith; sufficient evidence; "judge" separate from "cop".

ADMINISTRATIVE FAIRNESS GUIDELINES

Determination of whether the applicable party (see Section 80 of the Act for clarification) has:
1) abated *and*
2) removed
the fire hazard, in accordance with the regulations.

Binding determination made by the designated forest official (Section 82).

N.B.: The Act defines a designated forest official as "a person employed in the Ministry who is designated by title to be a designated forest official by the Minister of that ministry for the purpose of a provision of this Act or regulations as set out in the designation".

Notice of determination given to the party (see Section 118(2) for required contents of this determination) to remove or abate the fire hazard, *with the date specified* for completion of this task.

The two most significant parts of this notice are (d) the party's right to review and appeal, and (e) the *right of the government to carry out the work and levy a penalty* if the person fails to comply.

Party has the right to request a review of the determination (see Review Process — Diagram #2).

If the issue goes through the appeal process and the content of the notice is confirmed, or if the party simply does not comply with the notice, the government has the authority to carry out the work *and to levy a penalty.* As with other penalty determinations, the above process should be followed in regard to assessing the amounts involved. If dissatisfied with the amount arrived at, the party could again invoke the right to review and appeal (the assessment of amount = determination).

NOTE: Contravention of Section 80 (failure to abate/remove a fire hazard in accordance with the regulations) is also an offence contained in Section 143. If the determination (outlined in the above process) is not complied with, the party could be charged with the offence.